

### REMARKS

In the current office action, the claims are rejected under 35 USC §112, second paragraph, as indefinite because the group R<sup>9</sup> is not defined in the claims. Claims 1-8 are also rejected under the judicially created doctrine of obviousness-type double patenting. These are addressed below.

#### 35 USC §112, Second Paragraph

The claims are rejected because R<sup>9</sup> is not defined in Claim 1. A definition of R<sup>9</sup> as being H or C<sub>1-3</sub>alkyl has been incorporated into Claim 1 in the amendment. This amendment to Claim 1 is supported by the fact that some of the substituent groups that are defined using R<sup>9</sup> in Claims 1 and 11 have specific values of H and C<sub>1-3</sub>alkyl in other claims.

For example, the substituent group R<sup>1</sup> in Claim 1 includes -NHC(=NH)NH<sub>2</sub> as selection (t), whereas R<sup>1</sup> in Claim 11, selection (i), is defined as -NHC(=NH)NR<sup>9</sup>R<sup>10</sup>. The definitions of R<sup>9</sup> and R<sup>10</sup> have to include H as one choice for internal consistency. The definition of R<sup>10</sup> already includes H, and H must also be a choice for R<sup>9</sup>. The definition of R<sup>1</sup> as including -NHC(=NH)NR<sup>9</sup>R<sup>10</sup> was inserted into Claim 1, since this encompasses the group that is currently in Claim 1.

The definition of R<sup>2</sup> in Claim 1 includes phenyl and heterocyclic groups that are substituted with several groups, including CO<sub>2</sub>R<sup>9</sup> as selection (n). In Claim 13, the substituents on the equivalent phenyl and heterocyclic groups include -CO<sub>2</sub>H and -CO<sub>2</sub>C<sub>1-3</sub>alkyl. For consistency, R<sup>9</sup> in Claim 1 must include H and C<sub>1-3</sub>alkyl as part of its definition. A definition of R<sup>9</sup> as H or C<sub>1-3</sub>alkyl was therefore added to Claim 1.

R<sup>1</sup> in Claim 1 was further amended to include several substituents that appear in the examples but were not included in the generic claim. This obviously is an oversight. R<sup>1</sup> in Claim 1 therefore has additional definitions that include the substituents on the heterocyclic substituents in the following examples, which are provided in Claim 27:

- Examples 45, 51, 80 and 81: -NHAc;
- Example 46: -NHCO<sub>2</sub>CH<sub>3</sub>;
- Example 35: -CH<sub>2</sub>C(=O)NHCH<sub>3</sub>; and
- Example 36: -CH<sub>2</sub>C(=O)N(CH<sub>3</sub>)<sub>2</sub>.

Obviousness-Type Double Patenting

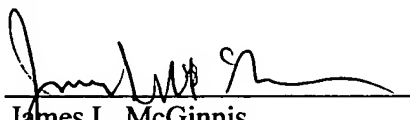
The cited reference was granted as US Patent 7,410,961, on August 12, 2008. There is no double patenting issue with respect to the '961 patent, because the claims do not overlap. There are no possible compounds that are included within the scope of both the '961 patent and the current claims. Note that in the '961 patent, the groups R<sup>16</sup> and R<sup>18</sup> together form a bridge, whereas the analogous groups in the instant claims are H. Thus, there must be a bridge in the '961 patent, and there cannot be a bridge in the instant claims. The double patenting rejection should be withdrawn.

All of the grounds for rejection have been overcome. The claims are in condition for allowance. Such allowance is earnestly solicited.

A fee is not believed to be required with this timely response. If any fee is required, the fee may be charged to Merck Deposit Account No. 13-2755.

If the examiner needs to discuss any matter relating to this application, the examiner is invited to telephone the undersigned attorney at the number below.

Respectfully submitted,

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